

**DEPARTMENT OF NATURAL RESOURCES**  
**FOREST MANAGEMENT DIVISION**  
**BOARDMAN RIVER NATURAL RIVER ZONING**

(By authority conferred on the commission of natural resources by section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws)

**R 281.251 Definitions.**

Rule 1. As used in these rules:

- (a) "Applicant" means a person who requests, on proper forms and pursuant to proper procedures, a zoning permit, special exception permit, or variance.
- (b) "Appurtenance" means a structure that is incidental to a dwelling, including, but not limited to, garages, private access roads, pump houses, wells, sanitary facilities, and electrical service lines.
- (c) "Bluff" means a steep bank which rises sharply from the river's edge.
- (d) "Building inspector" means the agency or individual who is appointed by the appropriate governmental subdivision to issue building permits and to administer the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws, and known as the state construction code act of 1972.
- (e) "Building permit" means a permit that is issued by the appropriate governmental subdivision as presently required under the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws.
- (f) "Commission" means the natural resources commission.
- (g) "Cutting edge of the river" means the edge of a river or stream where the water velocity is such that it may cause soil or streambank erosion.
- (h) "Director" means the director of the department of natural resources.
- (i) "Family" means either of the following:
  - (i) One or more persons who are related by blood, legal adoption, or marriage and who occupy a single-family dwelling unit with not more than 3 other persons.
  - (ii) Not more than 5 unrelated persons who occupy a single-family dwelling unit.
- (j) "Filtered view of the river" means the maintenance or establishment of woody vegetation of sufficient density to screen developments from the river, to provide for streambank stabilization and erosion control, to serve as an aid to infiltration of surface runoff, and to provide cover to shade the water. The vegetation need not be so dense as to completely block the river view. "Filtered view of the river" means no clear cutting.
- (k) "Front" means that side of a lot abutting the river's edge of the mainstream or tributary.
- (l) "Lot" means a continuous area or acreage of land which can be described for purposes of transfer, sale, lease, rental, or other conveyance.
- (m) "Lot of record" means a lot that actually exists in a subdivision plat as shown on the records of the county register of deeds before the effective date of these rules, or a lot or parcel described by metes and bounds which has been recorded as required by law.

(n) "Natural river district" means the Boardman river natural river district as described in R 281.253(1).

(o) "Ordinary high-water mark" means the line between the upland and bottomland which persists through successive changes in water level and below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.

(p) "Reforestation" means the renewal of vegetative cover by seeding, planting, or transplanting.

(q) "River's edge" means the ordinary high-water mark as used in Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws, and as defined in subdivision (o) of this rule.

(r) "Setback" means the horizontal distance between any portion of a structure and the river's edge, measured at the structure's closest point to the river's edge.

(s) "Single-family dwelling" means a detached building, or portion thereof, which is used exclusively for residential purposes, which is designed for, or occupied exclusively by, 1 family, and which contains housekeeping facilities.

(t) "Soil erosion and sedimentation control enforcement agency" means the local agency that is appointed by the appropriate governmental subdivision to enforce the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws.

(u) "Structure" means anything that is constructed, erected, or moved to or from any premise which is located above, on, or below the ground, including, but not limited to, roads, signs, billboards, and mobile homes. Temporary recreational facilities, including, but not limited to, tents, camper trailers, and recreation vehicles are not considered structures when used less than 30 days per year and located landward of the natural vegetation strip.

(v) "Zoning administrator" means the administrator of these rules who is appointed by the natural resources commission.

(w) "Zoning permit" means a standard form which is issued by the zoning administrator upon a determination that the proposed use of land and the proposed construction of buildings and structures thereon are in compliance with all provisions of these rules.

(x) "Zoning review board" means a group of not less than 5 nor more than 9 people which includes not less than 3 local representatives and 1 department of natural resources representative and which is appointed by the commission to act upon requests for special exceptions.

History: 1981 AACS.

### **R 281.252 Purpose.**

Rule 2. The commission, on its own motion, in order to implement the intent of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, and in the absence of local zoning to protect the Boardman river, a designated natural river, promulgates these zoning rules whose purposes are as follows:

(a) To promote the public health, safety, and general welfare, to prevent economic and ecological damage due to unwise development patterns within the natural river district, and to preserve the values of the natural river district for the benefit of present and future generations.

(b) To protect the free-flowing condition, fish and wildlife resources, water quality, scenic and aesthetic qualities, and historical and recreational values of the Boardman river and adjoining land.

(c) To prevent flood damage due to interference with natural floodplain characteristics by excluding developments which are vulnerable to flood damage and which may reduce the capacity of the floodway of the river to withstand flooding conditions.

(d) To provide for residential and other compatible, permitted uses that complement the natural characteristics of the natural river system.

(e) To protect individuals from investing funds in structures proposed for location on lands unsuited for such development because of high groundwater, erosion, or vulnerability to flood damage.

History: 1981 AACs.

### **R 281.253 Boundaries; rules of construction; display and filing of zoning map; effect of zoning rules.**

Rule 3. (1) The boundaries of the Boardman river natural river district shall be as described in these rules and as depicted on the certified Boardman river natural river zoning map. The Boardman river natural river district comprises an area which is described as follows:

(a) Mainstream of Boardman river above Brown bridge dam to Forks.

(b) Mainstream of Boardman river from the north boundary of Grand Traverse county property in section 27, T27N, R11W, Garfield township to Brown bridge dam, section 15, T26N, R10W, East Bay township.

(c) North branch from Forks to U.S. 131 in Kalkaska county.

(d) South branch from Forks to U.S. 131 in Kalkaska county.

(e) Beitner creek to Sawyer road in section 8, and south to the south line of section 9, T26N, R11W, Blair township.

(f) Jackson creek to the south line of section 31, T26N, R10W, Paradise township.

(g) Swainston creek to the west line of section 8, T25N, R10W, Paradise township.

(h) Jackson creek to Wood road, section 14, T25N, R10W, Paradise township.

(i) East creek to Bancroft and Parker creeks, section 36, T26N, R10W, Paradise township.

(j) Parker creek to the east-west centerline of section 31, T26N, R9W, Union township.

(k) Bancroft creek to Sparling road, section 7, T25N, R9W, Fife lake township.

(l) Carpenter creek to county road 660, section 13, T26N, R9W, Union township.

(m) Twenty-two creek to the east line of section 27, T26N, R9W, Union township.

(n) Taylor creek to U.S. 131, section 15, T26N, R9W, Boardman township.

(o) Crofton creek to U.S. 131, section 2, T26N, R8W, Boardman township.

(p) Failing creek to U.S. 131, section 30, T27N, R7W, Kalkaska township.

(q) The lands lying within 400 feet of the river's edge which are enumerated in subdivisions (a) to (p) of this subrule.

(2) Certified copies of the Boardman river natural river zoning map shall be filed with the local tax assessing officers and with the state tax commission, and additional display copies shall be provided to local officials in the Boardman river area, including all of the following:

(a) County register of deeds.

(b) Zoning administrator of these rules.

- (c) Local planning, zoning, and health officials.
- (d) Township and county clerks.
- (e) Local building inspector.
- (f) Local soil erosion and sedimentation control enforcement agencies.
- (g) The soil conservation service.
- (h) Boardman river advisory council.

(3) These zoning rules do not repeal, abrogate, or impair any existing easements, covenants, or deed restrictions applicable to lands within the natural river district, except that if these rules impose greater restrictions than those found on such easements, covenants, or deeds, the provisions of these rules shall prevail.

(4) These zoning rules do not permit actions prohibited by other statutes or ordinances, including any zoning ordinances, which are applicable to the natural river district. Therefore, all of the following provisions apply:

(a) All earth-changing activities, other than normal landscaping or maintenance, that are undertaken within 500 feet of a lake or stream are subject to the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws.

(b) All dredge and fill activities and construction of permanent structures lying below the ordinary high-water mark are subject to the provisions of Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws.

(c) All development and land uses in the Boardman river natural river district are subject to the provisions of appropriate local zoning ordinances, health codes, and building codes, including requirements for permits and approvals.

(5) If uncertainty exists with respect to the boundaries indicated on the Boardman river natural river zoning map, all of the following rules shall apply:

(a) Boundaries that are indicated as approximately following streets or highways shall be construed to be the center lines of the streets or highways.

(b) Boundaries that are indicated as approximately following lot lines shall be construed as following such lot lines.

(c) Boundaries that are indicated as approximately following city, township, or county boundary lines shall be construed as following such city, township, or county boundary lines.

(d) Boundaries that are indicated as approximately following railroad lines shall be construed to be midway between the main tracks.

(e) Boundaries that are indicated as approximately parallel to the center lines of streets or highways shall be construed as being parallel thereto and at such distance therefrom as indicated on the official Boardman river natural river zoning map. If no distance is given, the dimension shall be determined by the use of the scale shown on the official Boardman river natural river zoning map.

(f) Boundaries that follow the shoreline or a river, stream, lake, or other body of water shall be construed to follow such shoreline and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline. Boundaries that are indicated as approximately following the thread of streams, canals, or other bodies of water shall be construed to follow such threads.

History: 1981 AACCS.

## **R 281.254 Zoning permits; application; additional requirements.**

Rule 4. (1) A person shall not commence excavation, erection, alteration, or repair of a building or structure, or commence a land use, until a zoning permit has been obtained from the zoning administrator. If the alterations or ordinary maintenance made on a dwelling does not change the character of the structure or land use, and if the total cost does not exceed 5% of the market value of the structure in any 12-month period, the owner of the structure or land is exempt from obtaining a zoning permit, but may be required to obtain a local building permit from the appropriate local building inspector.

(2) A written application for a zoning permit shall be filed with the zoning administrator. All of the following information shall be submitted with an application for a zoning permit:

(a) Two copies of a site plan which gives accurate dimensions on either a scale drawing or a rough sketch and which contain all of the following information:

(i) The location on the lot of all existing and proposed structures.

(ii) The existing or intended use of the structure.

(iii) The generalized vegetative cover.

(iv) The lines and dimensions of the lot to be used.

(b) Evidence of ownership of all property that is affected by the coverage of the permit.

(c) Evidence that all required federal, state, county, and township licenses or permits have been acquired, or that applications have been filed for the required licenses and permits.

(d) Other information as required by the zoning administrator, which is necessary to carry out the intent and provisions of these rules.

(3) One copy of both the plans and the specifications shall be filed and retained by the zoning administrator, and the other copy shall be delivered to the applicant when the zoning administrator has approved the application, completed the site inspection, and issued the zoning permit. To insure that new land uses in the natural river district are in conformance with these rules, before beginning construction or commencing a land use, the applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed. Failure to obtain and display a permit is a violation of these rules.

(4) Within 30 days of receipt of a completed application, the zoning administrator shall render a decision to issue or deny a permit. If a permit is denied, notice of the denial, together with the reasons for the denial, shall be sent to the applicant.

(5) Zoning permits are valid for 1 year and are not transferable. All buildings shall be completed within 1 year from the date of issuance of the zoning permit. However, 1 extension may be authorized by the zoning administrator, in writing, for a period of time not to exceed 6 months. Any subsequent extensions shall have the written approval of the zoning review board.

History: 1981 AACs.

### **R 281.255 Subdivision of land; plats with preliminary approval.**

Rule 5. (1) A lot that exists on the effective date of this rule, or amendment thereto, shall not be subdivided or reduced in dimension or area below the minimum requirements of these rules. Lots that are created after the effective date of this rule shall meet the minimum requirements of these rules, except as provided in subrule (2) of this rule.

(2) Proposed lots that have preliminary plat approval pursuant to Act No. 288 of the Public Acts of 1967, as amended, being S560.101 et seq. of the Michigan Compiled Laws, but which do

not meet the dimensional requirements of these rules on the effective date shall, on final plat approval, be issued a permit subject to the requirements provided in R 281.259.

History: 1981 AACCS.

### **R 281.256 Permitted uses.**

Rule 6. (1) The following uses are permitted by the owner upon the owner's property within the natural river district, subject to the limitations and requirements outlined in these zoning rules, local ordinances, and other applicable statutes:

(a) Private camping and other recreational activities which do not require the installation of permanent structures and which are outside of the natural vegetation strip.

(b) The operation of watercraft, subject to the limitations of local ordinances established under the authority of Act No. 303 of the Public Acts of 1967, as amended, being S281.1001 et seq. of the Michigan Compiled Laws.

(c) Fishing and hunting in compliance with existing laws and rules.

(d) Reforestation and other accepted forest management practices, subject to the limitations outlined in R 281.257.

(e) Normal agricultural activities, if the activities meet the requirements of these rules, and if the bureau of environmental protection of the department of natural resources determines that such activities do not contribute to stream degradation.

(f) The operation of licensed motor vehicles on dedicated public roads or access roads to private single-family dwellings.

(g) Off-road operation of emergency and public utility maintenance vehicles.

(h) Private footpaths that are constructed by the landowner of natural materials to facilitate permitted uses.

(2) The following uses are permitted upon prior approval of the zoning administrator:

(a) One single-family dwelling and appurtenances on a lot not less than 200 front-feet wide and 200 feet deep, subject to the following limitations:

(i) On the mainstream portion of the Boardman river described in R 281.253(1)(a), new buildings and appurtenances shall be required to set back not less than 150 feet from the river's edge.

(ii) On the mainstream portion of the Boardman river and all tributaries described in R 281.253(1)(b) to (p), new buildings and appurtenances shall be required to set back not less than 100 feet from the river's edge.

(iii) New structures shall be set back not less than 50 feet from the top of the bluff on the cutting edges of the river and tributaries, or 25 feet from the top of the bluff on the noncutting edge of the stream.

(iv) Set back shall be not less than 15 feet from side lot lines and not less than 25 feet from the right-of-way of a public road.

(v) New structures shall not be located on land that is subject to flooding.

(b) Plats, if the minimum setbacks and lot width requirements specified in subdivision (a) on this subrule are met.

(c) Private boat docks that are not more than 10 feet in length, with none of the dock extending over the water, if they are designed, constructed, and maintained with indigenous natural

materials, and if a permit is issued under the authority of Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws.

(d) Mining and extracting industries which are located more than 300 feet from the ordinary high-water mark, if they are constructed and operated pursuant to applicable local ordinances and state laws and rules.

(e) Utility lines to service private single-family dwellings.

(f) Utility transmission lines on lands or interests in real property which are continuously owned by a utility from January 1, 1971, subject to review and approval by the commission.

(g) Disposal fields and septic tanks which are located not less than 100 feet from the ordinary high-water mark or on lands that are not subject to flooding, whichever distance is greater, and which are in conformance with local county health codes and these rules. In addition, a septic tank or absorption field shall not be closer than 50 feet to any surface or subsurface drainage system emptying into the Boardman river or its designated tributaries.

(h) Land alteration, such as grading, dredging and filling of the land surface, unless the high-groundwater table is within 6 feet of the land surface, if the activities meet all of the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws, and Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws, and if approval is granted by the local soil erosion and sedimentation control enforcement agency and the department of natural resources.

(i) Signs and outdoor advertising devices shall meet all of the following requirements:

(i) They shall be related to permitted uses.

(ii) They shall not be more than 1 square foot in area for residential uses and not more than 4 square feet in area for any other uses.

(iii) They shall not be illuminated by a neon light or flashing device.

(iv) They shall not be attached to a tree or shrub.

(j) Other uses for which an applicant is granted a permit by the zoning administrator pursuant to R 281.258, R 281.259, and R 281.261.

History: 1981 AACS.

### **R 281.257 Natural vegetation strip.**

Rule 7. On that portion of the mainstream described in R 281.253(1)(a), a 75-foot minimum restrictive cutting belt shall be maintained on each side of the stream and on the portion of the mainstream and tributaries described in R 281.253(1)(b) to (p), a 50-foot minimum restrictive cutting belt shall be maintained on each side of the stream. Trees and shrubs may be pruned for a filtered view of the river upon approval of the zoning administrator or the area forester, but clear cutting in the natural vegetation strip is prohibited. The natural vegetation strip is also subject to both of the following provisions:

(a) Dead, diseased, unsafe, or fallen trees and noxious plants and shrubs, including poison ivy, poison sumac, and poison oak, may be removed.

(b) Selective removal or trimming of trees for timber harvest, access, woodlot improvement, landscaping, or public utility lines to service private single-family dwellings is permitted upon approval of the area forester or zoning administrator.

History: 1981 AACS.

**R 281.258 Special exception permits.**

Rule 8. (1) Special exception permits may be granted to allow a use in the natural river district which is not specifically permitted by R 281.256, if implementation of that use does not contravene the purposes of these rules as specified in R 281.252.

(2) Application for a special exception permit shall be made on a form provided by the zoning administrator.

(3) Upon reviewing an application for a special exception permit, the zoning review board, at any time before rendering a decision thereon, shall require the applicant to furnish all of the following information which the zoning review board deems necessary for determining the suitability of the particular site for the proposed use:

- (a) A detailed description of the proposed activity or use.
- (b) A surface view plan which gives accurate dimensions on either a scale drawing or a rough sketch and which shows all of the following:
  - (i) Elevations or contours of the ground, including existing earth fills.
  - (ii) Generalized vegetative cover.
  - (iii) Size, location, and spatial arrangement of all proposed and existing structures on the site.
  - (iv) Location and elevation of streets, access roads, and water supply and sanitary facilities.
- (c) Photographs that show existing land uses and vegetation upstream and downstream from the proposed use.
- (d) Valley cross sections that show the natural stream channel; streambanks; high-water marks; flood marks, if known; and locations of proposed developments.
- (e) All other information which is deemed relevant by the zoning administrator and which is necessary to carry out the intent and provisions of these rules.

(4) Before considering applications, the zoning review board shall give notice, by certified mail, to all of the following:

- (a) Property owners whose property is within 500 feet of the proposed use as shown on the current tax assessment rolls.
- (b) The appropriate local officials and department of natural resources personnel, including all of the following:
  - (i) The township supervisor.
  - (ii) The township building inspector.
  - (iii) The county health officer.
  - (iv) The local soil erosion and sedimentation control enforcement agency.
  - (v) County and township planning and zoning officials.
  - (vi) The soil conservation service.
  - (vii) The regional office and natural rivers section of the department of natural resources.
  - (viii) Boardman river advisory council.
- (c) Any other interested parties who request that they be notified of such applications in the natural river district.

(5) In reviewing an application, the zoning review board shall consider all of the following:

- (a) All relevant factors specified in these rules in light of the spirit and intent of the purposes specified in R 281.252.
- (b) The economic effect of the subject property weighed in light of the applicant's entire contiguous holdings and not merely the portion within the natural river district. If the subject



portion is the remainder of a larger holding, this fact, together with a description of the title history, shall be included in the hearing evidence.

(c) Increases in flood levels and flood damage that may be occasioned by the proposed use at the site and upstream and downstream from the site, water quality consequences, and other relevant factors within the terms of these rules.

(d) The cumulative effect upon the natural river district from the potential development of holdings in a legal position similar to the applicant's, if the applicant's request is approved by the zoning review board.

(e) Reasonable alternatives that are available to the applicant.

(6) In weighing the applicant's request, consideration of public health, safety, and welfare shall prevail unless private injury is proved by a preponderance of the evidence, to be so great as to override the public interest.

(7) A requested use shall not be granted if the zoning review board determines that the requested use poses a substantial hazard to life or to public or private property rights.

(8) The zoning review board may require public hearings to be held regarding the application. The zoning review board shall decide on an application within 30 days after its receipt, except that if public hearings are held or if additional information is required pursuant to subrule (3) of this rule, the zoning review board shall render a decision within 30 days following the hearings or upon receipt of the last requested item of information.

(9) The zoning review board shall attach such conditions to the granting of a special exception permit as are necessary to further the purposes of these rules.

(10) A special exception use shall adhere strictly to the terms of the special exception permit. A special exception permit that does not adhere strictly to the terms of the permit may be revoked by the zoning administrator.

History: 1981 AACCS.

### **R 281.259 Substandard lots of record.**

Rule 9. (1) The zoning administrator, in compliance with the terms of this subrule, shall grant a permit if, because of either of the following circumstances, a proposed structure cannot be erected on a lot of record or a lot described in a deed or land contract executed and delivered before the effective date of this rule:

(a) The lot is of insufficient width, depth, or area.

(b) Physical limitations exist on an existing lot or parcel.

(2) The zoning administrator shall ensure that all structures are located to best meet the objectives and purposes of these rules, the adopted Boardman river natural river plan, and Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws.

(3) The zoning administrator shall determine if a proposed structure on a lot of record or on a lot described in a deed or land contract executed and delivered before the effective date of these rules cannot conform to the standards listed in R 281.256(2)(a) and is, therefore, ineligible for consideration for use under R 281.256.

(4) A written application for a zoning permit on a lot of record shall be filed with the zoning administrator. The same information required in R 281.254(2) shall be submitted with an application.

(5) The zoning administrator shall grant a zoning permit for the use of a substandard lot of record only upon a showing of all of the following:

- (a) Granting the permit is not contrary to the public interest.
- (b) The permit does not allow the establishment of a use not otherwise permitted by these rules.
- (c) The permit applies only to the property under the control of the applicant.
- (d) The practical difficulties claimed by the applicant are not the result of actions taken by the applicant.

(e) Granting the permit poses no substantial hazard to life or to public or private property rights, secures public safety, and does substantial justice.

(f) Granting the permit will not result in an increase of flood levels or risk of flood damage to other lands.

(g) The lot shall be developed pursuant to department of natural resources requirements under Act No. 245 of the Public Acts of 1929, as amended, being S323.1 et seq. of the Michigan Compiled Laws.

(h) Use of the lot will not significantly impair existing water quality, vegetative cover, fisheries, or wildlife habitat or increase the risk of erosion.

(i) The substandard lot size shall be the minimum dimensional reduction necessary to achieve a reasonable use of the land, after evaluation of alternative dimensional arrangements and permitted land uses available to the applicant, given the peculiar characteristics of the lot and circumstances surrounding the request. Alternatives shall be examined in light of the applicant's entire contiguous holdings and not merely a single lot or the portion within the natural river area. If dimensional requirements may be more nearly met through lot combination of contiguous holdings, the zoning administrator may so require.

(j) The permit provides that no fill shall be placed within the natural vegetation strip and that the approval of both the appropriate county or district health department and the soil erosion and sedimentation control enforcement agency shall be secured.

(k) The permit provides conditions necessary to insure proper development of the substandard lot pursuant to these rules.

(6) A special exception permit is required if a dimensional reduction of more than 50% of any of the standards listed in R 281.256(2)(a) is necessary to achieve reasonable use of the land. The zoning review board shall base its decision upon the standards set forth in R 281.258(5).

(7) The zoning administrator may confer with, and seek the advice of, the zoning review board, personnel of the Michigan department of natural resources, and other federal, state, and local officials to determine the possible effects of, and a suitable location for, a proposed structure.

(8) One copy of the plans, specifications, and the zoning permit, with conditions attached, shall be filed and retained by the zoning administrator, and another copy of each shall be delivered to the applicant when the zoning administrator has approved the application, completed the site inspection, and issued a zoning permit.

(9) The applicant may appeal any decision of the zoning administrator or any conditions attached to a zoning permit to the zoning review board.

History: 1981 AACS.

## **R 281.260 Nonconforming uses.**

Rule 10. (1) The lawful use of any land or structure that is in existence on the effective date of these rules may be continued even though the use does not conform to these rules.

(2) Routine or normal repairs and maintenance work required to keep a nonconforming structure or other use, such as a roadway, in sound condition are permitted. Remodeling of nonconforming structures within the confines of the existing foundation and elevations is permitted if the structure is neither enlarged nor extended nor its use changed.

(3) A special exception permit is required for the restoration of a nonconforming building or structure which is damaged or destroyed by more than 50% of its value due to flood, fire, or other means. In determining whether 50% of the value has been destroyed, the zoning review board shall use appraised replacement costs, as determined by a qualified individual appointed by the zoning review board, and shall compare the value of the part destroyed to the value of the total operating unit where there are several buildings or structures which are used together by the landowner as a single operating unit. A request for a permit to restore a nonconforming building or structure damaged or destroyed by more than 50% of its value shall be approved if all of the following conditions exist:

(a) The land on which the building or structure is situated is not subject to flooding.

(b) The continued use of a nonconforming building or structure will not lead to accelerated bank erosion or other material degradation of the river resource, and the use of the building or structure is approved by the local soil erosion and sedimentation control enforcement agency.

(c) The continued use conforms with local county health codes and is approved by the local county health department.

(d) The continued use conforms with local building codes and is approved by the local building inspector.

(e) Restoration of a damaged building or structure, if approved by the zoning review board, shall be started within 1 year from the time of damage.

(4) A nonconforming use may be changed to a use of a like or similar character if the new use more closely conforms to the rules of the natural river district.

(5) A nonconforming use of any land or structure shall not be enlarged or extended without a special exception permit granted upon consideration of the factors outlined in subrule (3) of this rule. An enlargement or extension of a nonconforming use of up to 50% of the land area or the floor area of a residential structure or public accommodation which provides overnight facilities and which does not exceed 12 units may be approved by the zoning review board if the owner submits to the zoning review board a detailed description of the proposed enlargement or extension, together with a site plan showing the location of all new structures or uses, and if the zoning review board determines that all of the following conditions exist:

(a) The land on which the nonconforming use is situated is not subject to flooding.

(b) The enlargement or extension of the nonconforming use does not lead to accelerated bank erosion or other material degradation of the river resource, and the enlargement or extension is approved by the local soil erosion and sedimentation control enforcement agency.

(c) The enlargement or extended use conforms with local county health codes and is approved by the local county health department.

(d) The enlarged or extended use conforms with local building codes and is approved by the local building inspector.

(e) The enlarged or extended use does not contravene the purposes of these rules as specified in R 281.252.

(6) The substitution of a nonconforming use with another nonconforming use may be made if a special exception permit is granted, based upon consideration of the factors outlined in subrule (5) of this rule, to ensure that the changed use conforms as closely as possible to the purposes of these rules as specified in R 281.252.

(7) If a nonconforming use is discontinued for 12 consecutive months, any future use at that site shall conform to these rules.

(8) A property owner may request the zoning review board to certify the existence of a prior nonconforming use on the owner's property. Certification of a prior nonconforming use shall be granted if the use meets the criteria of this rule and the common law criteria of nonconforming uses of this state.

History: 1981 AACS.

#### **R 281.261 Appeals; contested cases.**

Rule 11. An aggrieved party who contests a decision of the zoning administrator or zoning review board shall be granted a hearing if a petition is filed with the director within 60 days after notice of disapproval is received. The hearing shall be conducted pursuant to the provisions for contested cases of Act No. 306 of the Public Acts of 1969, as amended, being S24.201 et seq. of the Michigan Compiled Laws, and R 299.3071 to R 299.3081.

History: 1981 AACS.

#### **R 281.262 Zoning administrator and zoning review board; appointment; and duties.**

Rule 12. The commission shall appoint a zoning administrator and a zoning review board to act as its agents to enforce these rules. The duties of the zoning review board and zoning administrator include, but are not limited to, all of the following:

- (a) Receiving and processing applications for zoning permits, special exception permits, petitions for appeals, requests for changes, amendments, and supplements.
- (b) Inspecting sites.
- (c) Issuing or denying zoning permits as outlined in these rules.
- (d) Assisting with other matters requiring a decision by the commission.

History: 1981 AACS.

#### **R 281.263 Violations.**

Rule 13. (1) An alleged violation shall be inspected by the staff of the department of natural resources. If a violation is found, the department shall order the applicant, in writing, to correct all conditions found to be in violation of these rules.

(2) The owner of a building, structure, or land which violates these rules is subject to the provisions of section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws.

History: 1981 AACS.

**R 281.264 Boundaries and permitted uses; changes, amendments, and supplements.**

Rule 14. (1) The commission may make changes, amendments, and supplements to boundaries and to permitted uses requested by a local unit of government or by a landowner, if implementation of the change, amendment, or supplement does not contravene the purposes of these rules as specified in R 281.252.

(2) A local unit of government or a landowner who requests a change, amendment, or supplement to the boundaries or to permitted uses shall have a hearing held pursuant to sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.271 to 24.287 of the Michigan Compiled Laws.

(3) Copies of any changes, supplements to boundaries, or adopted amendments shall be sent to all of the following:

- (a) The county register of deeds.
- (b) The zoning administrator of these rules.
- (c) Local planning, zoning, and health officials.
- (d) Township and county clerks.
- (e) The local building inspector.
- (f) Local soil erosion and sedimentation control enforcement agencies.
- (g) The soil conservation service.
- (h) Public utility companies which provide service to riverfront property owners affected by these rules.
- (i) Boardman river advisory council.

(4) Upon approval by the director, a local zoning ordinance which meets all of the requirements of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, Act No. 184 of the Public Acts of 1943, as amended, being S125.271 et seq. of the Michigan Compiled Laws, or Act No. 183 of the Public Acts of 1943, as amended, being S125.201 et seq. of the Michigan Compiled Laws, whichever is applicable, shall take precedence over these rules. If the director withdraws his or her approval of a local zoning ordinance, or if the local ordinance becomes inapplicable to the land area encompassed by the Boardman river natural river district through court action or for any other reasons these rules shall apply.

History: 1981 AACs.